



Federal Communications Commission
Washington, D.C. 20554

November 12, 2004

DA 04-3584

Melodie A. Virtue, Esq.
Garvey Shubert & Barer
1000 Potomac Street, NW
Fifth Floor
Washington, DC 20007-3501

Dear Ms. Virtue:

This letter is in response to your letter of November 9, 2004, on behalf of Horizon Broadcasting Group LLC, requesting that the Federal Communications Commission ("Commission") re-evaluate the eligibility of a bidder in Auction No. 37, Patricia Van Zandt, for a new entrant bidding credit.¹ You allege that Ms. Van Zandt failed to disclose her attributable media interests on her short-form application (Form 175) as required by the Commission's rules, and that this may affect Ms. Van Zandt's eligibility for a new entrant bidding credit. Auction No. 37 commenced on November 3, 2004, and is currently ongoing.²

The Commission takes allegations of wrongdoing very seriously. However, we are also sensitive to the fact that any action we take during the course of an ongoing auction, or before the long-form applications (Forms 301) are filed, could harm the integrity of the auction process. Upon receipt of the short-form applications, the Commission carefully scrutinized each application to ensure compliance with the Commission's rules. Generally, we believe it is more prudent to address such allegations after the winning bidders have submitted their long-form applications when there is greater opportunity for investigation.³ As Auction No. 37 is ongoing, we are unable, at this time, to specify the long-form due date. Please note however, that at the close of Auction No. 37, in accordance with Section 1.2108(b) of the Commission's rules, we will issue a public notice announcing the timeframe and procedures for filing petitions to deny.

¹ Letter from Melodie A. Virtue, Counsel for Horizon Broadcasting Group, LLC, to Margaret Wiener, Chief, Auctions and Spectrum Access Division (dated Nov. 9, 2004).

² See "Auction of FM Broadcast Construction Permits, Scheduled for November 3, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payment and Other Auction Procedures," *Public Notice*, 19 FCC Rcd 10570 (2004).

³ See Baker Creek Communications, L.P., For Authority to Construct and Operate Local Multipoint Distribution Services in Multiple Basic Trading Areas, *Memorandum Opinion and Order*, 13 FCC Rcd 18709 (1998); see also Letter from Margaret Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, to Steven R. Sixberry, Nevada Wireless, DA 00-1949 (rel. August 24, 2000).

Melodie A. Virtue
November 12, 2004

Accordingly, we believe that your request is not ripe and is denied.

Sincerely,

Gary D. Michaels
Deputy Chief, Auctions and Spectrum Access Division
Wireless Telecommunications Bureau

cc: Geoffrey Bentley